

Montana Code Annotated 2014

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2-4-111. (Temporary) Small business impact analysis -- assistance. (1) Prior to the adoption of a proposed rule, the agency that has proposed the rule shall determine if the rule will significantly and directly impact small businesses. If the agency determines that the proposed rule will impact small businesses, the determination must be published in the register when the proposed rule is published. If the agency determines that the proposed rule may have a significant and direct impact on small businesses and if subsection (4) does not apply, the agency shall prepare a small business impact analysis that, at a minimum, must:

- (a) identify by class or group the small businesses probably affected by the proposed rule;
- (b) include a statement of the probable significant and direct effects of the proposed rule on the small businesses identified in subsection (1)(a); and
- (c) include a description of any alternative methods that may be reasonably implemented to minimize or eliminate any potential adverse effects of adopting the proposed rule while still achieving the purpose of the proposed rule.

(2) The agency shall provide documentation for the estimates, statements, and descriptions required under subsection (1).

(3) The office of economic development, established in [2-15-218](#), shall advise and assist agencies in complying with this section.

(4) An agency is not required to prepare a separate small business impact analysis under this section if the agency pursuant to [2-4-405](#) is preparing or has prepared an economic impact statement regarding adoption, amendment, or repeal of a rule.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a small business impact analysis required under this section. *(Terminates July 1, 2015--sec. 6, Ch. 318, L. 2013.)*

History: En. Sec. 1, Ch. 318, L. 2013.

Provided by Montana Legislative Services

EXAMPLE:
Standard SBIA Statement

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8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State March 17, 2014.

EXAMPLE:

Dpt of Labor & Industry

HB 127 (2013) Rules SBIA Statement

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concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail and telephone on June 10, 2013 during the initial stage of rule drafting.

11. With regard to the requirements of 2-4-111, MCA, the department conducted a small business impact analysis and determined that there will not be significant, direct impact upon small employers as a result of the adoption of proposed NEW RULES I and II. A copy of the department's small business impact analysis is available on request from Don Gilbert, Department of Labor and Industry, P.O. Box 8020, Helena, MT 59624-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD/Montana Relay Service (406) 444-5529; or e-mail dgilbert@mt.gov.

/s/ Judy Bovington

Judy Bovington
Rule Reviewer

/s/ Pam Bucy

Pam Bucy
Commissioner of Labor
Department of Labor and Industry

Certified to the Secretary of State September 9, 2013.

EXAMPLE:**Dpt of Labor & Industry****HB 127 (2013) Rules****Small Business Impact Analysis****Small Business Impact Statement****HB 127**

The Montana Department of Labor and Industry, Unemployment Insurance Division (Department) prepared this Small Business Impact Statement to address the direct impact on small business of HB 127, codified as § 39-51-605, MCA (Chapt. 203, Sec. 1, L. 2013). HB 127 is the only unemployment insurance (UI) legislation resulting from the 2013 Montana Legislative Session that may directly impact small businesses. The Department has determined that the various statutory amendments enacted by HB 261, SB 127 & SB 128 will have no impact on either small or large businesses. The Department has further determined that HB 127 will have no significant impact on small businesses in Montana.

Briefly, HB 127 establishes that an employer who, without good cause, fails to timely or adequately answer Department questions regarding the circumstances of a former employee's separation from employment will forfeit the right to participate as an interested party in the adjudication of a claim for unemployment insurance benefits of a prior employee. The also law provides that an employer waives the right to appeal a Department decision on the UI claim and the right to credit for any overpayment that may have resulted from the employer's failure to timely and adequately address the Department's questions regarding an employee's separation from employment. Existing law requires all employers to timely and adequately respond to Department queries regarding a UI claim filed by a prior employee. HB 127 adds a penalty for the employer's failure to do so.

HB 127 was enacted to bring Montana into compliance with Public Law 112-40, passed by Congress to address a nation-wide problem involving untimely responses from employers. Certain companies, which specialize in representing large, multi-state employers on UI matters, are the most notorious offenders. As a consequence of untimely or inadequate information submitted by employers, UI benefits have been overpaid to former workers, which claimants must then pay back to the unemployment insurance trust fund. Collection of benefit overpayments require additional work and staffing by the agencies administering the state and national Unemployment Insurance programs. HB 127 will come into play only when an employer fails to respond in a timely manner.

According to the Department of Labor and Industry, Research & Analysis, 97% of the Montana businesses employ 49 or fewer workers. A scan of employers currently registered with the Unemployment Insurance program reveals a total 39,004 registered employers, of which 38,874 or 95.65% are "small employers," as the term is defined by SB 139. Approximately 1,567 or 4.0% are "large employers" with 50 or more employees. Department's records do not show the number of employees working for 130 or .3% of employers during the past four calendar quarters. The Department finds the difference between the estimated percentage of "small

employers" reached by Research & Analysis (97%) and the Unemployment Insurance Program (95.65%) to be insignificant.

The vast majority of small employers in Montana have consistently provided timely responses to all Department inquiries. Employers may represent themselves at all stages of unemployment insurance benefit adjudication. Employers do not need to hire attorneys or specialized, nationally-operating, employer-representative companies, such as ADP, Thomas and Thorngren, and TALX. While the employer-representative companies do operate in Montana and represent a few small employers, the majority of the clients of ADP, Thomas and Thorngren, and TALX are large, multi-state employers.

The Department anticipates that HB 127 will impact very few small employers, especially the small employers that represent their own interests in the UI adjudication process. All employers are required to provide information or respond to the Department's questions concerning a former employee's unemployment insurance claim within eight days. *Rule 24.11.450A, ARM*. While the Department cannot accurately determine the number of small employers who have failed to respond in a timely or adequate manner to Department queries in the past, the Department has determined that the majority of untimely or inadequate employer responses to Department queries were the fault of the employer-representative companies representing large, multi-state employers.

The Department has determined that neither small nor large employers will incur additional costs due to HB 127. There are no new fees assessed against small or large employers by HB 127. Small employers will not incur any new or increased operational costs as a result of the passage of HB 127 because employers are already required to respond to Department request for information concerning separation from employment and wage history of current and former employees. No additional paperwork is required to comply with HB 127.

The administrative rules proposed for the implementation of HB 127 provide an opportunity for an employer to appeal the Department's determination that the employer provided an untimely or inadequate response to a relevant and material Department question. If the hearings officer decides the employer had good cause for responding in an untimely or inadequate manner, the employer's "interested party" status will be restored and the employer will again be qualified to receive "credit" for any benefit overpayment that resulted from its untimely or inadequate response.

EXAMPLE:

**DNRC Combined Appropriation
Rules SBIA Statement**

thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

9. The bill sponsor contact requirements of [2-4-302](#), MCA, do not apply.

10. With regard to the requirements of [2-4-111](#), MCA, the department has determined that the amendment and adoption of the above-referenced rules will significantly and directly impact small businesses.

/s/ John E. Tubbs

JOHN E. TUBBS

Director

Natural Resources and Conservation

/s/ Candace F. West

Candace F. West

Rule Reviewer

Certified to the Secretary of State December 16, 2013.

EXAMPLE:
DNRC
Combined Appropriations Rules
Small Business Impact Analysis



State of Montana
Department of Natural Resources and Conservation
Small Business Impact Analysis:

Proposed Rulemaking: In the matter of the amendment of ARM 36.12.101 and the adoption of New Rules I and II regarding water right combined appropriation (MAR 36-22-175)

July 26, 2013

The rule changes the definition of "combined appropriation" by providing alternative criteria that: limits the distance between wells or developed springs comprising a combined appropriation on the same tract that may or may not be physically connected; or that includes multiple wells or developed springs within a subdivision that may or may not be physically connected as a combined appropriation. The criterion regarding wells that are physically manifold into the same system is essentially retained in the new definition.

Combined appropriations under the proposed rule that would require a permit include:

- (a) multiple wells from the same source appropriating more than 10 acre-feet annually that are physically connected into a single system for the same project;
- (b) multiple wells appropriating more than 10 acre-feet from the same source annually that may not be physically connected, but are located within 1,320 feet of one another and on the same tract;
- (c) for a subdivision, multiple wells appropriating more than 10 acre-feet for 40 acres; and
- (d) for a subdivision, multiple wells appropriating more than 10 acre-feet for 40 acres plus one-quarter acre-foot for each additional acre beyond 40 acres.

Combined appropriations that stay under those limits above would be able to use multiple wells without obtaining a permit.

Small businesses potentially impacted by the proposed rule

SB 139 directs agencies to determine whether a proposed rule would "significantly and directly impact small businesses." If the agency determined that such an impact were expected to result from the proposed rule, the agency would be required to prepare a small business impact analysis identifying "by class or group the small businesses probably affected by the proposed rule" and the "probable significant and direct effects" of the proposed rule on small businesses. A description of "alternative methods" to minimize potential adverse effects of the proposed rule is to be included also. SB 139

defines a "Small business" as a "business entity" that is "independently owned and operated and that employs fewer than 50 full-time employees."

Further, SB 139 directs the Office of Economic Development to advise and assist agencies in complying with the Small Business Impact Analysis requirements. Guidance from the Office of Economic Development was provided in a Memorandum dated July 22, 2013. The Guidance offered considerations regarding "major" impacts—positive or negative—that "directly" result from the application of a proposed rule to a small business including changes in fees, in capital or ongoing compliance costs, or in other costs in the form of time, paperwork, or "specialized external services."

Of course, all small businesses in Montana use water obtained by any of various means. The administration of this proposed rule may significantly and directly impact small businesses due to changes in requirements associated with obtaining new permits to use water. These impacts include costs and benefits accruing to small businesses through additional permitting requirements and through reduced costs of protecting existing water rights that result from these additional permitting requirements.

Types of small businesses (North American Industry Classification System (NAICS) subsector codes are included in parentheses.) that may potentially be affected directly by the proposed rule include agricultural production (11115, 11194, 11211), oil and gas extraction (21111), residential and commercial property development (23721), water well-drillers (237110, 22131), and geohydrologists or consulting engineers (54133, 54136, 54162). The number of small business establishments in Montana potentially affected by this proposed rule has not been estimated.

Probable impacts of the proposed rule on small businesses

Criterion "a"

Criterion "a" in the definition essentially represents the current rule. Applicants seeking a combined appropriation for multiple wells that are physically connected into a single system and draw from the same source would continue to require a permit for appropriations exceeding 10 acre-feet annually.

Criterion "b"

Criterion "b" would apply to existing tracts and it would require a permit for multiple wells within 1,320 feet of one another on the same tract that appropriate an annual combined volume exceeding 10 acre-feet. Currently, the exemption pertains to individual wells that appropriate less than 10 acre-feet regardless of the distance between wells. This additional permitting requirement may impose costs on small businesses in the form of filing fees (up to \$1,000 for a Groundwater Application), preparation of an application, or, possibly in the case of non-exempt appropriations in closed basins, expenses for services required to submit a Hydrogeologic Assessment Report. To some extent, land developers—which may or may not be defined as small businesses—may be able to recover these costs from purchasers of tracts that may include homeowners, small

businesses, or other entities. The increase in demand for services sought by applicants in order to comply with this proposed rule potentially represents a significant, direct, positive impact to small businesses providing those services. The demand for services of well-drillers, however, may decrease to the extent that the proposed rule reduces the number of individual, exempt wells developed in the future. Alternatively, increased permits may result in larger wells drilled by well driller with a potential positive effect.

The proposed rule would be unlikely to affect livestock producers because the distance between stockwater wells is approximately 4,590 feet for each owner based on a random sample of the water rights database.

A 40-acre tract probably would not require a permit for wells within 1,320 feet of each other that serve a house, a lawn and garden, and a shop as long as the total volume of those wells does not exceed 10 acre feet.

Entities that potentially may require a permit under the proposed rule that currently do not require a permit include users that provide water for wetland complexes or for industrial wells. Some of these entities may be small businesses or may require the services of small businesses to comply with the additional requirements imposed by the proposed rule.

Criterion "c"

Criterion "c" may limit lawn and garden irrigation on lots of new subdivisions, but it does not prohibit individual subdivision lots from obtaining water through individual wells for developments appropriating water not exceeding 10 acre-feet for 40 acres. The option to provide water through a public supply system remains available to a developer. Compared to the current rule, a larger number of subdivisions would fail to qualify for the exemption and, therefore, a developer either would apply for a permit or would include a public water supply system under a combined appropriation in the development. The costs associated with the additional permitting requirement would be similar to those described under criterion "b" above. Under this part of the proposed rule, well-drillers may be affected in a fashion similar to that described above in that the appropriation of water by means of fewer, larger wells may diminish the demand for their services, but the wells drilled may be larger and generate more income for a well-driller on a per well basis than smaller, individual house wells. The shift to other sources of water, however, may increase demand for services provided by other small businesses, such as those involved with the construction of public water systems or consulting firms assisting in water right permitting, for example. As stated in the discussion of criterion "b", most costs to developers—some of which are small businesses—are likely to be recovered from purchasers of subdivision lots. Developing a permitted, combined appropriation or a public water supply system is likely to substantially enhance the marketing prospects of a subdivision.

Criterion "d"

Criterion "d" would likely have the same effect as criterion "c".

The proposed rule may reduce the costs of protecting reliable access to water provided by existing water rights—some of which are held by small businesses of various types. Estimating the scope and magnitude of the impacts of the proposed rule on small businesses is problematic due to the large number of small businesses that use water throughout Montana and to the uncertainty associated with the change resulting from this proposed rule in the demand for services procured for the water right permit application process. The task is further obscured by the uncertainty related to the ability of small businesses to recover water development costs from customers and to the uncertainty related to the net impact on small businesses of compliance costs incurred through the procurement of services that may be provided by other small businesses. In sum, the proposed rule may significantly and directly impact small businesses both positively and negatively, but some of the costs incurred by small businesses may be recovered from other entities.

Alternative methods

It is unclear what alternative methods may be reasonably implemented that would minimize any potential adverse effects on small businesses of adopting the proposed rule while still achieving its purpose.